

that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in §133.22(c) or §133.23(d) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information.* From the time merchandise is presented for Customs examination until the time a notice of detention is issued, Customs may disclose to the owner of the trademark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Once a notice of detention is issued, Customs shall disclose to the owner of the trademark or trade name the following information, if available, within 30 days, excluding weekends and holidays, of the date of detention:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (4) The quantity involved; and
- (5) The country of origin of the merchandise.

(c) *Samples available to the trademark or trade name owner.* At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner shall, in lieu of return of the sample, certify to

Customs that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.25(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement.”

(d) *Form of notice.* Notice of detention of articles found subject to the restrictions of §133.22 or §133.23 shall be given the importer in writing.

#### **§ 133.26 Demand for redelivery of released merchandise.**

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of §133.22 or §133.23 of this subpart, the port director shall promptly make demand for the redelivery of the merchandise under the terms of the bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, in accordance with §141.113 of this chapter. If the merchandise is not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with §141.113(h) of this chapter.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 99-64, 64 FR 43266, Aug. 10, 1999]

#### **§ 133.27 Civil fines for those involved in the importation of merchandise bearing a counterfeit mark.**

In addition to any other penalty or remedy authorized by law, CBP may impose a civil fine under 19 U.S.C. 1526(f) on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that bears a counterfeit mark resulting in a seizure of the merchandise under 19 U.S.C. 1526(e) (see §133.21 of this subpart), as follows:

(a) *First violation.* For the first seizure of merchandise under this section, the fine imposed will not be more than the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

(b) *Subsequent violations:* For the second and each subsequent seizure under this section, the fine imposed will not

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be more than twice the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

[CBP Dec. 03–12, 68 FR 43637, July 24, 2003]

### Subpart D—Recordation of Copyrights

#### § 133.31 Recordation of copyrighted works.

(a) *Eligible works.* Claims to copyright which have been registered in accordance with the Copyright Act of July 30, 1947, as amended, or the Copyright Act of 1976, as amended, may be recorded with Customs for import protection.

(b) *Persons eligible to record.* The copyright owner, including any person who has acquired copyright ownership through an exclusive license, assignment, or otherwise, and claims actual or potential injury because of actual or contemplated importations of copies (or phonorecords) of eligible works, may file an application to record a copyright. "Copyright owner," with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

(c) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § 133.32, § 133.35, § 133.36, or § 133.37.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–212, 38 FR 21397, Aug. 8, 1973; T.D. 87–40, 52 FR 9474, Mar. 25, 1987]

#### § 133.32 Application to record copyright.

An application to record a copyright to secure Customs protection against the importation of infringing copies or phonorecords shall be in writing addressed to the Intellectual Property Rights Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, DC 20229, and shall include the following information:

(a) The name and complete address of the copyright owner or owners;

(b) If the applicant is a person claiming actual or potential injury by reason of actual or contemplated importations of copies or phonorecords of the eligible work, a statement setting

forth the circumstances of such actual or potential injury;

(c) The country of manufacture of genuine copies or phonorecords of the protected work;

(d) The name and principal address of any foreign person or business entity authorized or licensed to use the protected work, and a statement as to the exclusive rights authorized;

(e) The foreign title of the work, if different from the U.S. title; and

(f) In the case of an application to record a copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s), and any other identifying names appearing on the surface of reproduction of the sound recording, or its label or container.

[T.D. 87–40, 52 FR 9474, Mar. 25, 1987, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

#### § 133.33 Documents and fee to accompany application.

(a) *Documents.* The application for recordation shall be accompanied by the following documents:

(1) An "additional certificate" of copyright registration issued by the U.S. Copyright Office. If the name of the applicant differs from the name of the copyright owner identified in the certificate, the application shall be accompanied by a certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing that the applicant has acquired copyright ownership in the copyright.

(2) Five photographic or other likenesses reproduced on paper approximately 8" × 10½" in size of any copyrighted work. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author or if it covers a sound recording. Five likenesses of a component part of a copyrighted work, together with the name or title, if any, by which the part depicted is identifiable, may accompany an application covering an entire copyrighted work.

(b) *Fee.* Each application shall be accompanied by a fee of \$190 for each copyright to be recorded. A check or